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IN THE
COURT OF APPEALS OF INDIANA

VICTORIA BARNES,	)	
	)	
Appellant-Respondent,	)	
	)	
vs.	)	No. 48A02-0607-JV-588
	)	
MADISON COUNTY	)	
DEPARTMENT OF CHILD SERVICES,	)	
	)	
Appellee-Petitioner.	)	

APPEAL FROM THE MADISON SUPERIOR COURT
The Honorable Jack L. Brinkman, Judge
Cause Nos. 48D02-0506-JT-182, 48D02-0506-JT-183

November 17, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

CRONE, Judge

Case Summary

Victoria Barnes ("Mother") appeals the involuntary termination of her parental rights as to her minor children, F.B. and C.B. We affirm.

Issue

Mother raises one issue, which we restate as whether the evidence is sufficient to support the termination of her parental rights.

Facts and Procedural History

F.B. was born on July 19, 1990, and C.B. was born on November 18, 1991. On November 30, 1999, the Madison County Department of Child Services ("MCDCS")[1] filed a petition alleging that C.B. was a child in need of services. MCDCS alleged that Mother had left seven-year-old C.B. home alone without a telephone. Anderson police officers located Mother at a downtown Anderson bar. Mother was intoxicated, her speech was slurred, and she could not stand without assistance. On December 9, 1999, Mother entered a general admission to the petition.

On May 11, 2000, Mother appeared with counsel at the dispositional hearing. After hearing evidence, the juvenile referee entered a dispositional decree, finding that C.B. was a child in need of services, making her a ward of MCDCS, and ordering that she remain in her placement outside her Mother's home. Mother was ordered to complete a substance abuse evaluation and follow all recommendations made by her therapist, submit to periodic drug screens, have regular supervised visitation with C.B., and cooperate with MCDCS.

On June 15, 2000, Mother appeared with counsel at the placement review hearing.

C.B. was returned to and placed in the home of Mother but remained a ward of MCDCS, and Mother was ordered to participate in the previously ordered programs. On August 29, 2000, MCDCS filed a petition to modify dispositional decree and for emergency change in residence, alleging that Mother had been threatening to kill herself for several days, was under the influence of alcohol and illegal drugs, and that Mother had been "afforded numerous opportunities and services to assist her in becoming alcohol and drug free, yet she has repeatedly failed in this drug and substance abuse recovery process." Appellant's App. at 44.

On September 26, 2000, the trial court held a hearing on the petition. Mother appeared with counsel and agreed to the recommendations of modification except to the extent that she requested that C.B. be placed in grandmother's home rather than in non-relative foster care. The trial court ordered that C.B. remain in shelter care pending an investigation of grandmother's home in Oklahoma, and that Mother continue counseling and submit to periodic drug screens. On March 13, 2001, C.B. was placed with Barbara Mattingly ("Grandmother"). At that time, Mother was serving a prison sentence for multiple convictions, including three convictions for class D felony operating while intoxicated, one conviction for class D felony possession of cocaine, and one conviction for neglect of a dependent. After Mother was released on probation on October 12, 2001, she lived with Grandmother and C.B. F.B. was also living with Grandmother. Grandmother reported that Mother was again abusing drugs and alcohol, and on October 24, 2001, the MCDCS case manager requested that Mother leave Grandmother's home and have no contact with C.B.

[1] The Office of Family and Children is now the Department of Child Services.

On November 8, 2001, C.B. was removed from Grandmother's home and placed in a Christian youth home along with F.B.

On November 15, 2001, MCDCS filed a petition alleging that F.B. was a child in need of services due to Mother's alcohol abuse. On February 21, 2002, the trial court entered a dispositional decree making F.B. a ward of MCDCS and continuing his placement at the youth home. At this time, Mother was incarcerated again because she had violated her probation.

On June 7, 2005, MCDCS filed petitions for involuntary termination of Mother's parental rights as to F.B. and C.B. A fact-finding hearing was held on January 10 and 31, 2006. On March 15, 2006, the trial court entered decrees terminating Mother's parental rights as to F.B. and C.B. This consolidated appeal ensued. Additional facts will be provided as necessary.

Discussion and Decision

Mother contends that evidence is insufficient to support the termination of her parental rights. Our standard of review is well settled.

> We will not set aside a trial court's order to terminate parental rights unless it is clearly erroneous. In determining whether the evidence is sufficient to support the judgment of termination, we neither reweigh the evidence nor judge the credibility of witnesses. We consider only the evidence that supports the judgment and the reasonable inferences to be drawn therefrom.

In re A.A.C., 682 N.E.2d 542, 544 (Ind. Ct. App. 1997) (citations omitted).

The purpose of terminating parental rights is not to punish parents but to protect children. *In re A.I.*, 825 N.E.2d 798, 805 (Ind. Ct. App. 2005), *trans. denied*. When the evidence demonstrates that the emotional and physical development of a child in need of

services is threatened, termination of the parent-child relationship is appropriate. *In re E.S.*, 762 N.E.2d 1287, 1290 (Ind. Ct. App. 2002). We emphasize that a trial court need not wait until a child is irreversibly influenced by a deficient lifestyle such that his or her physical, mental, and social growth is permanently impaired before terminating the parent-child relationship. *Id*. This Court has stated:

> The involuntary termination of parental rights is an extreme measure that terminates all rights of the parent to his or her child and is designed to be used only as a last resort when all other reasonable efforts have failed. The Fourteenth Amendment to the United States Constitution provides parents with the rights to establish a home and raise their children. However, the law allows for termination of those rights when the parties are unable or unwilling to meet their responsibility as parents. This policy balances the constitutional rights of the parents to the care and custody of their children with the State's limited authority to interfere with these rights. Because the ultimate purpose of the law is to protect the child, the parent-child relationship must give way when it is no longer in the child's best interest to maintain the relationship.

M.H.C. v. Hill, 750 N.E.2d 872, 875 (Ind. Ct. App. 2001) (citations omitted).

Indiana Code Section 31-35-2-4(b)(2) provides that a petition to terminate parental rights must allege, in pertinent part, that:

> (B) there is a reasonable probability that:
> (i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or
> (ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;
> (C) termination is in the best interests of the child; and
> (D) there is a satisfactory plan for the care and treatment of the child.

The petitioner must prove each of these elements by clear and convincing evidence. Ind. Code § 31-37-14-2; *In re D.L.*, 814 N.E.2d 1022, 1026 (Ind. Ct. App. 2004), *trans. denied*. Because subparagraph (b)(2)(B) is written in the disjunctive, however, the trial court need only find one of the two elements by clear and convincing evidence. *Bester v. Lake County*

Office of Family & Children, 839 N.E.2d 143, 148 n.5 (Ind. 2005).

Mother first asserts that MCDCS failed to prove that the conditions resulting in the removal of the children would not be remedied. To determine whether the conditions that resulted in F.B. and C.B.'s removal will be remedied, the trial court must examine Mother's fitness at the time of the termination proceeding. *In re Termination of Parent-Child Relationship of L.V.N.*, 799 N.E.2d 63, 69 (Ind. Ct. App. 2003). Additionally, the trial court must gauge the patterns of conduct in which the parent has engaged to determine if future changes are likely to occur. *Id*. "When making its determination, the trial court can reasonably consider the services offered to the parent and the parent's response to those services." *Id*. Where there are only temporary improvements and the pattern of conduct shows no overall progress, the trial court may reasonably find that under the circumstances, the problematic situation will not improve. *Matter of D.L.W.*, 485 N.E.2d 139, 143 (Ind. Ct. App. 1985).

Mother argues that she substantially complied with the services recommended by MCDCS in that she completed the following: substance abuse counseling; parenting classes; Thinking For A Change, a cognitive behavior change program; a transition program; and a life skills program. We observe, however, that Mother was incarcerated from February 2001 through October 2001, again in January 2002 through June 2004, and again from October 2004 through May 2005. Tr. at 29. Our review of the dates upon which the aforementioned programs were completed shows that Mother completed them while she was incarcerated. In fact, the majority of the programs were completed during her first and second incarcerations. When Mother was not in prison, she did not cooperate with MCDCS. For example, when

Mother was released in October 2001, she refused to comply with home-based services and counseling.

Of greatest significance to our analysis here is the fact that Mother habitually returned to drugs and alcohol, and therefore, the programs Mother did complete failed to improve her behavior. After Mother was released from prison the second time, she tested positive for alcohol at her parole officer's office, resulting in her third incarceration. Then, just five months after her release from her third prison stint, and two months before the termination hearing, Mother attended a family counseling session in October 2005 with F.B., C.B., and their therapist at the youth home. At this counseling session, F.B. accused Mother of being drunk and wanted to call the police. Mother denied that she had been drinking and called F.B. a liar. Eventually, Mother admitted that she had had a few beers. C.B. fled the counseling session in tears. The children's therapist advised the staff not to allow Mother on campus again.

Mother also argues that she testified that she had been attending AA and NA meetings and relapse prevention programs since May 2005. She testified that she had her own place and wanted her children back. She asserts that there "has been no showing that the programs which mother has been continually engaged in would fail to remedy the situation." Appellant's Br. at 18. Contrary to Mother's assertion, the children's case manager testified that Mother's substance abuse has "always been a problem," that the children are "kept in constant turmoil," and that the conditions causing the removal of the children cannot be remedied. Tr. at 22-23, 26, 27. We note at the time of the termination hearing, F.B. and C.B. had been continuously placed outside Mother's home for over five years. Given Mother's

habitual pattern of relapse, we cannot say that it was unreasonable for the trial court to find that Mother's substance abuse would not permanently improve. *See Matter of A.M.*, 596 N.E.2d 236, 239 (Ind. Ct. App. 1992) (concluding that evidence strongly indicates mother habitually failed to provide for the needs of children and will continue the same pattern of conduct in the future), *trans. denied; see also D.L.W.*, 485 N.E.2d at 143 (concluding that, given mother's unfortunate reoccurring behavior pattern, evidence that there is no reasonable probability that circumstances leading to child's removal will be remedied was clear and convincing).

We now address Mother's argument that MCDCS failed to present clear and convincing evidence that termination is in best interests of the F.B. and C.B. When determining whether termination of parental rights is in the best interests of the child, the trial court is required to look at the totality of the evidence and, in so doing, must subordinate the interests of the parents to those of the child. *In re T.F.*, 743 N.E.2d 766, 776 (Ind. Ct. App. 2001), *trans. denied*. "Children are not removed from the custody of their parents just because there is a better place for them, but because the situation while in their parents' custody is 'wholly inadequate for their survival.'" *Carrera v. Allen County Office of Family & Children*, 758 N.E.2d 592, 595 (Ind. Ct. App. 2001) (quoting *J.K.C. v. Fountain County Dep't. of Pub. Welfare*, 470 N.E.2d 88, 93 (Ind. Ct. App. 1984)). However, the trial court need not wait until the child is irreversibly influenced such that his or her physical, mental and social growth is permanently impaired before terminating the parent-child relationship. *In re T.F.*, 743 N.E.2d at 776.

Here, MCDCS presented clear and convincing evidence that termination of Mother's

parental rights is in the best interests of F.B. and C.B. Mother has had ample time to leave behind her life of substance abuse and become a stable presence in the lives of F.B. and C.B. F.B. and C.B. have been living together at the youth home since November 2001. The children's case manager testified that F.B. and C.B. have been dealing with Mother's addiction all their lives. She testified that the children have repeatedly experienced a cycle in which, after becoming comfortable in their environment, Mother gets out of jail and makes promises, and the children are let down when Mother goes back to jail. She further testified that F.B. and C.B. "need a secure loving home with a parent that is going to be there and take care of them and love them." Tr. at 27. The children's therapist at the youth home testified that the children no longer feel that they can count on or depend on their mother because of the number of times they have been disappointed by her recurring drinking problem. The testimony of the case manager and the therapist demonstrates that Mother's habitual return to alcohol and drugs have created a situation in which her continued custody is wholly inadequate for the survival of F.B. and C.B. *See Carrera*, 758 N.E.2d at 595.

Moreover, the CASA recommended that the children have no contact with Mother and that Mother's parental rights be terminated.[2] This Court has previously determined that the recommendations of the welfare case worker and child's guardian ad litem that parental rights be terminated support a finding that termination is in the child's best interests. *In re*

[2] MCDCS asserts that the case manager, the children's therapist, and the CASA "all recommended that it was in the children's best interest that [Mother's] rights be terminated." Appellee's Br. at 9. Not only did MCDCS fail to provide proper citation to the record to support this assertion, thereby impeding our review, but the record reveals that neither the case manager nor the children's therapist specifically testified that, in their opinion, termination was in the children's best interests. We admonish MCDCS to support their position accurately and honestly.

Campbell, 534 N.E.2d 273, 276 (Ind. Ct. App. 1989). In the case at bar, the CASA's recommendation and the testimony of the case manager and therapist support the trial court's finding that termination is in the best interests of F.B. and C.B. We therefore conclude that the record contains sufficient evidence that termination of Mother's parental rights is in the best interests of F.B. and C.B. Accordingly, we affirm the trial court.

Affirmed.

BAKER, J., and VAIDIK, J., concur.